



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

BRIAN SMITH,

*Plaintiff,*

v.

CITY OF VIDOR, BREANNA WHITMER,  
AND BURGER KING CORPORATION,

*Defendants.*

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**CIVIL ACTION NO. 1:19-CV-615**

**ORDER ADOPTING REPORT AND OF PARTIAL DISMISSAL**

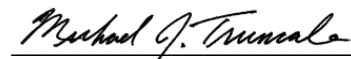
The Court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration. On October 13, 2020, the magistrate judge issued his Report and Recommendation, recommending that the District Court deny Defendant City of Vidor's Motion to Dismiss (ECF No. 33) and grant Defendant Breanna Whitmer's Motion to Dismiss (ECF No. 47). *See Report and Recommendation* (ECF No. 54). No party has filed objections pursuant to 28 U.S.C. § 636(b)(1)(c).

Having conducted a *de novo* review, the Court agrees with the magistrate judge's findings and recommended disposition. It is therefore **ORDERED** that the Report and Recommendation (ECF No. 54) is **ADOPTED**. The Court **ORDERS** that the City of Vidor's Motion to Dismiss (ECF No. 33) is **DENIED** because Plaintiff has pled sufficient facts to show he may be entitled to

relief on his claims against the City of Vidor. *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007).

Additionally, Defendant Breanna Whitmer's Motion to Dismiss (ECF No. 47) is **GRANTED** because, based on the facts as pled, she had reasonable suspicion to detain Plaintiff for a brief period of time. *United States v. Chavez*, 281 F.3d 479, 485; *see also United States v. Brigham*, 182 F.3d 500, 507 (5th Cir. 2004) (en banc). The Court further **ORDERS** that Plaintiff's claims against Breanna Whitmer are **DISMISSED**, in their entirety, with prejudice. The Clerk is directed to **TERMINATE** Ms. Whitmer as an active party defendant. Plaintiffs' other causes of action remain pending.

**SIGNED** this 24th day of November, 2020.

A handwritten signature in black ink, reading "Michael J. Truncale", is positioned above a horizontal line.

Michael J. Truncale  
United States District Judge